In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.8196 of 2005.

Date of decision:1.8.2007.

Bhakra Beas Management Board.

...Petitioner.

Versus

Dhani Ram and others.

...Respondents.

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Coram: Hon'ble Mr. Justice K. S. Garewal.

Hon'ble Mr. Justice S. N. Aggarwal.

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Present: Mr. D. S. Nehra, Senior Advocate with Mr. Munish Bhardwaj, Advocate for the petitioner.

Mr.Arvind Mittal Advocate for the respondents.

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Judgment.

S. N. Aggarwal, J.

Dhani Ram. respondent (now represented by his legal representatives) was in possession of plot No.123, measuring 1125 square feet situated in Kiln Area, Nangal Township. He filed a civil suit on 23.12.1992 against the petitioner-Bhakra Beas Management Board (in short B.B.M.B) for permanent injunction with the allegations that he was in possession of this plot since 1958-59. He has constructed a house on it and, therefore, he has become owner of this plot by way of adverse possession. He sought injunction against the B.B.M.B not to dispossess him from the

said plot.

The suit was contested by the petitioner-Board.

The trial Court held vide judgment dated 21.9.1995 (Annexure P-2) that Dhani Ram has not become owner of the plot in dispute by adverse possession but granted injunction that he can be dispossessed only in accordance with law. The appeal filed by Dhani Ram was dismissed by the learned Lower Appellate Court vide judgment dated 28.2.2002 (Annexure P-11). This judgment became final.

On the other hand, the B.B.M.B initiated legal proceedings to take possession of the plot in dispute in accordance with law and issued notice to Dhani Ram on 8.2.1995 to vacate his illegal possession over plot No.123. On his failure to do so, the B.B.M.B filed a petition under Section 4 and 5 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (in short the Act of 1971) before the Estate Officer, Bhakra Beas Management Board for the eviction of Dhani Ram from the said plot and for the recovery of damages from him. The said application was contested by Dhani Ram, respondent. It was dismissed by the Estate Officer vide order dated 22.5.2003 (Annexure P-13). An appeal was filed by the B.B.M.B in the Court of District Judge, Rupnagar. It was also dismissed by the Additional District Judge, Rupnagar vide judgment dated 20.7.2004 (Annexure P-15).

Hence, the present writ petition challenging the order dated 22.5.2003 passed by the Estate Officer and the order dated 20.7.2004 passed by the Additional District Judge, Rupnagar.

The submission of learned counsel for the legal representatives

of Dhani Ram respondent was that the B.B.M.B was not the owner of the plot in suit and, therefore, the B.B.M.B has no right to claim its possession. It was also submitted that this plea was taken by the respondent in para 4 of the written statement filed before the Estate Officer (Annexure P-3).

This submission has been considered by us. It has no merit. To recapitulate the facts, Dhani Ram had himself filed a civil suit for permanent injunction against the B.B.M.B. It was alleged by Dhani Ram respondent that he has become owner by adverse possession. Obviously, the suit for injunction was filed against the true owner against whom Dhani Ram was claiming ownership by way of adverse possession. The trial Court in the judgment dated 21.9.1995 (Annexure P-2) observed in para 4 of the judgment that evidence led by Dhani Ram proved that all these plots were under the control and management of the Bhakra Beas Management Board i.e. B.B.M.B. The B.B.M.B had also led evidence to prove that plot No.123 vested in the B.B.M.B. A perusal of judgment dated 21.9.1995 (Annexure P-2) passed by the Court of Additional Senior Sub Judge, Anandpur Sahib in the suit filed by Dhani Ram respondent against the B.B.M.B clearly proves that plot No.123 was owned by the B.B.M.B over which Dhani Ram claimed ownership by way of adverse possession.

The petitioner had filed an appeal against the said judgment. The learned Lower Appellate Court also observed that plot No.124 was allotted to Kartar Chand by the B.B.M.B in January, 1959 and said Kartar Chand was the father-in-law of Dhani Ram respondent and said Kartar Chand was making the payment of rent/ lease money to the B.B.M.B. The learned Appellate Court up-held the judgment recorded by the learned trial

Court on 21.9.1995 and dismissed the appeal vide judgment dated 28.2.2002 (Annexure-11).

These judgments, therefore, clearly reveal that ownership of the B.B.M.B over plot No.123 was never disputed by Dhani Ram in the Civil Courts. No such plea was taken by Dhani Ram before the Civil Court that the B.B.M.B was not the owner of that plot nor any evidence was led by him in support of this plea. Therefore, by his own conduct, Dhani Ram had conceded the ownership of the B.B.M.B over plot No.123 which is in dispute.

Secondly, it was not disputed by Dhani Ram respondent that plot No.124 was allotted to his father-in-law Kartar Chand by the B.B.M.B and he was making the payment of lease money to it. If plot No.124 was owned, managed and controlled by the B.B.M.B, it cannot be presumed that plot No.123 was not owned by the B.B.M.B or if it was owned by somebody else.

Thirdly, no doubt, Dhani Ram respondent had taken the plea in the written statement filed before the Estate Officer that the B.B.M.B was not the owner of the suit property but the evidence led by him was to the contrary. Even Dhani Ram appearing as his witness had stated that he did not know who was the owner of the plot. He further stated that initially B.B.M.B was the owner of the land and later, it was claimed by the Municipal Committee. He further deposed that since J.E of the B.B.M.B had come to stop the construction,therefore, he was saying that B.B.M.B was the owner (Annexure P-5). Even Kewal Krishan appearing as a witness of Dhani Ram respondent before the Estate Officer deposed that the B.B.M.B

had allotted some plots to the people and the Kiln area belonged to the B.B.M.B and it was managed and controlled by the B.B.M.B (Annexure P-7). Plot No.123 admittedly is a part of Kiln area. Therefore, the evidence of the respondents before the Estate Officer clearly proved that plot No.123 is owned, managed and controlled by the B.B.M.B.

Fourthly, even the Estate Officer in the impugned order dated 22.5.2003 (Annexure P-13) has given a direction to the B.B.M.B to allot the said plot to Dhani Ram at twice the lease rate as applicable to the regular leases . This also clearly means that the plot in dispute was owned by the B.B.M.B and by none else and the B.B.M.B has the control and management of the plot number 123. Dhani Ram or his legal representatives did not file any appeal against these observations made by the Estate Officer. Therefore, there is no force in the submission of learned counsel for Dhani Ram respondent that B.B.M.B. is not the owner of the suit property.

The version of Dhani Ram respondent was that he was in possession of the plot in dispute since 1958-59. He has constructed a house over it. He has got electric connection in 1961 and water connection in 1982. Therefore, he has become owner by adverse possession and he cannot be dispossessed.

Admittedly, Dhani Ram had merely filed a suit for permanent injunction pleading his ownership by way of adverse possession but that plea was rejected by the Court of Additional Senior Sub Judge, Anandpur Sahib vide judgment dated 21.9.1995 (Annexure P-2) and it was held that Dhani Ram had taken electric connection in 1961 for plot No.124 and not for plot No.123. Similarly, the water connection in 1982 was taken for plot

No.124 and not for plot No.123. It was further held that these documents do not prove the possession of Dhani Ram over the plot since 1958 or 1961. Dhani Ram had filed appeal against this judgment but it was dismissed by the Court of Additional District Judge, Rupnagar vide judgment dated 28.2.2002 (Annexure P-11). Since both the Courts below have ruled out the ownership of Dhani Ram over plot No.123 by way of adverse possession, therefore, he cannot be held to be the owner of this plot.

Plot No.124 was allotted in the name of Kartar Chand, who was the father-in-law of Dhani Ram. This plot No.123 was originally allotted to Kewal Ram son of Shri Madan Lal, resident of Gandhi Nagar, Delhi vide lease deed dated 16.8.1959 (as observed in para No.4 of the judgment dated 28.2.2002 (Annexure P-11) but Kewal Ram got his lease cancelled. It appears, that Dhani Ram by taking advantage of this situation took illegal possession of plot No.123. Neither Dhani Ram nor his legal representatives claimed lease rights or tenancy rights over this plot. Obviously, Dhani Ram and his legal representatives are in illegal possession over plot No.123.

Merely because Dhani Ram has constructed a house over this plot which was neither owned by him nor was on tenancy with him, no rights can flow to him or after his death to his legal representatives. The respondent cannot draw any benefit for remaining in illegal possession for a long time till he is declared owner by adverse possession over the plot in suit.

Admittedly, the B.B.M.B is the creation of the Punjab Re-organisation Act, 1966 and is an organ of the State and plot in suit owned, managed and controlled by the B.B.M.B. is obviously a public premises.

Therefore, the provisions of the Act are applicable to the plot in suit. The Estate officer, therefore, committed a clear error in rejecting the application for ejectment and for directing the B.B.M.B to allot plot N.o.123 Kiln Area, Nangal Township to Dhani Ram or to his legal representatives. The learned Lower Appellate Court was also not justified in dismissing the appeal when it was clear to it that Dhani Ram was in illegal possession of the public property.

In view of the discussion held above, order dated 22.5.2003 passed by the Estate Officer and the order dated 20.7.2004 passed by the Additional District Judge, Rupnagar are patently illegal and are set aside. This petition is accepted. The respondents are directed to remove their illegal structure raised on the plot in dispute bearing No. 123 Kiln area, Nangal Township within three months and to hand over the vacant possession of this plot to the B.B.M.B.

However, the damages are declined at this stage. But, if the respondents failed to hand over the vacant possession within three months from today, as stated above, the respondents would be liable to make the payment of damages to the B.B.M.B for use and occupation as claimed i.e. with effect from 8.2.1995 at the rate of Rs.580/- per month till the vacant possession is handed over to the B.B.M.B.

This petition is accepted in terms stated above.

` (S. N. Aggarwal)
Judge

Ist August,2007 (K. S. Garewal)
Jaggi Judge